UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

PETROLEUM AND CHEMICAL
INSULATION, INC. d/b/a
PETROCHEM INSULATION

Employer

and

INTERNATIONAL ASSOCIATION OF
HEAT AND FROST INSULATORS AND
ASBESTOS WORKERS LOCAL 16

Case 20-RC-18080

Petitioner

and

INTERNATIONAL UNION OF PETROLEUM
AND INDUSTRIAL WORKERS[1]

Incumbent Union

DECISION AND DIRECTION OF ELECTION

The Employer, Petroleum and Chemical Insulation, Incorporated d/b/a Petrochem Insulation, is engaged in the construction industry as a contractor that installs insulation and performs asbestos and lead abatement and other types of work. It has a place of business located

[1] The Incumbent Union was served with the Notice of Hearing in the instant case and, although it did not participate in the hearing, the Employer's counsel on the record at the hearing represented that the Incumbent Union's representative was aware that the hearing was being held and was unable to attend. The Employer's counsel also represented on the record that the Incumbent Union currently represents and is interested in continuing to represent the employees in the existing contractual unit, as described below.

at Vallejo, California, from which the Employer performs work on jobsites primarily located in Northern California and Western Nevada.

At the hearing, Petitioner sought a unit comprised of approximately 75 insulators and asbestos abatement workers employed out of the Employer's Vallejo facility, excluding all other employees, guards and supervisors as defined in the Act. In its untimely filed brief,[2] the Petitioner amended the unit as follows:

> All full-time and regular part-time on-site construction craft employees including insulators, scaffold builders, painters, coatings workers, asbestos and lead-abatement workers, refractory workers, fireproofing workers, steam and electrical tracing workers, welders, laborers and helpers including working foremen employed on construction projects in Northern California and Western Nevada, in the area administered by the Vallejo office excluding, office clerical employees, guards, supervisors and all other employees.

By its brief, Petitioner also amended the unit sought to include the foremen, dropping its contention at the hearing that the foremen are statutory supervisors who should be excluded from the unit.

The Employer takes the position that the petitioned-for unit is not an appropriate unit and that the unit described in its existing collective-bargaining agreement with the International Union of Petroleum and Industrial Workers, herein called the Incumbent Union, which is

[2] I hereby grant the Employer's May 22, 2006, motion to strike Petitioner's brief for being improperly mailed by regular mail to the Employer on the date that it was due to be filed in the Regional Office (May 15, 2006) and for improperly filing it in the Regional Office on the due date by facsimile transmission. See Board's Rules and Regulations Section 102.111(b) and 102.114(g), which respectively prohibit a party from serving a document on another party by mail on or after the due date and prohibit filing briefs with the Regional Office by facsimile transmission. Accordingly, I am not considering the factual and legal arguments made in Petitioner's brief in this proceeding. However, I am taking into account the amendments to the petition made in Petitioner's brief.

For the sole purpose of enabling review of my decision by the Board in this regard, should it be challenged on review, I am including a copy of the Petitioner's brief with service sheet attached as Rejected Exhibit 1. A copy of the Employer's motion to strike Petitioner's brief is included in the record as Board Exhibit 2.

effective from July 1, 2003 through June 30, 2006 (the Agreement), is appropriate. The unit under this Agreement is described as follows:

> All full-time and regular part-time employees of the Employer, including insulators, helpers, laborers, truck drivers, warehousemen, fabricators, fireproofers, painters, scaffold builders, welders, steam and electrical tracers, equipment operators, refractory installers, sheet metal workers, carpenters, and iron workers employed by the Employer on work projects directed or administered by the Employer's Northern California (Vallejo) office; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

In Case 20-RC-17952, which involved a representation petition filed by Petitioner on April 19, 2004,[3] the Region dismissed the petition, finding that the Incumbent Union was the Section 9(a) representative of the Employer's employees in the above-described contractual unit and that the Agreement between the Employer and the Incumbent Union constituted a bar to the petition filed in that case. No evidence has been introduced in this proceeding to establish that the Incumbent Union is no longer the Section 9(a) representative of the employees in this unit.

By its amended petition, Petitioner seeks a unit which carves out certain craft classifications from the unit under the Agreement and excludes employees in several craft and non-craft classifications that are included within the scope of the existing Agreement; specifically, the amended petition excludes sheet metal workers, carpenters, iron workers, fabricators, equipment operators, truck drivers and warehousemen. The Petitioner also seeks to

[3] I hereby take administrative notice of and include in the record as Board Exhibit 3, a copy of the petition in Case 20-RC-17952, dated April 19, 2004, and as Board Exhibit 4, a copy of the letter, dated September 7, 2004, dismissing that petition. Both of these documents are official Board documents, of which I am entitled to take administrative notice in this proceeding. *See International Union of Operating Engineers, Local 51,* 345 NLRB No. 78 fn. 2 (September 29, 2005); *Painters Local 447 (Hargrove),* 306 NLRB 97, fn. 1 (1992); *Bryant & Stratton Business Institute*, 321 NLRB 1007 fn. 2 (1996). I also take administrative notice that in 2003, the Petitioner filed and withdrew three petitions to represent insulation and asbestos abatement employees at the Employer's Vallejo and Fresno facilities in Cases 20-RC-17854, 20-RC-17852 and 20-RC-17846.

change the description of the geographic scope of the existing unit under the Agreement from employees "employed by the Employer on work projects directed or administered by the Employer's Northern California (Vallejo) office," to employees "employed on construction projects in Northern California and Western Nevada, in the area administered by the Vallejo office." The Petitioner seeks this change in the scope to eliminate employees of the Employer who work at jobsites outside Northern California and Western Nevada.

The Employer takes the position that the existing contractual unit under the Agreement is the appropriate unit for collective bargaining purposes.

For the reasons discussed below, I find that the unit sought by the Petitioner is not an appropriate unit and that the existing unit set forth in the Agreement between the Employer and the Incumbent Union is an appropriate unit.

FACTS

The Employer's Operation. The only witness to testify at the hearing was the Employer's Senior Vice President, Pat Leiser. At the time of the hearing, Leiser was in charge of several projects being handled out of the Vallejo facility.

The Employer is engaged as a contractor in the construction industry, performing new construction and maintenance work, including insulation, asbestos and lead abatement, painting, fireproofing, refractory and other types of work. Such work is performed by crews of varying size on projects of varying duration. The Employer has several facilities in the United States, including the Vallejo, California facility involved in the instant case, and facilities in Southern California, Indiana, Utah, Oregon, Washington and Hawaii. Each of these facilities primarily handle work within an assigned geographic area, with the Vallejo facility handling work in the Northern California/western Nevada area, from Fresno to Eureka and west to Battle Mountain,

Nevada. Leiser testified that approximately ninety-nine percent of the jobs handled out of the Vallejo office are on jobsites located within this geographic area.

The Employer has about eight or nine "permanent" jobsites in Northern California, where it maintains a year-round work force. At two of these sites—namely, the Valero and Tesoro refineries—project superintendents are present year-round with work crews that vary in size depending on the work being performed. At the other six or seven "permanent" sites, foremen are assigned on a regular basis along with crews of varying size, generally comprised of between one and twenty employees. In addition to these permanent sites, the Employer bids on other projects within the Northern California/western Nevada area, and at the time of the hearing, it was engaged in work on many jobsites within the area.

Out-of Area/Out-of-State Work. In addition to handling work within their respective geographic areas, the various offices of the Employer also handle work in other geographic areas if they are responsible for obtaining such work and if the jobsite is not located within the geographic area assigned to another office. In addition, the various offices supply labor to projects that are being managed by other offices. Leiser testified that only a small percentage (one or two percent) of the jobs performed by the Vallejo office are outside of the Northern California/western Nevada area. According to Leiser, at the time of the hearing, the Employer was managing projects in Georgia and South Carolina and providing manpower to another project in Wyoming that was being managed by the Employer's Utah office. The South Carolina project had been going on for a few months at the time of the hearing. One of the Employer's six project managers,[4] Art Lewis, was the project manager at that site and one of its regular

[4] These project managers at the Vallejo office are Pat Leiser, Terry Leiser, Art Lewis, Mike Minick, Ken Norris and Rick Smith.

foremen, Eric Madrid, was the foreman on the job. With regard to the Wyoming project, Leiser testified that the Employer had been supplying some employees who would normally be working out of the Vallejo office to the Wyoming project for about a week to ten days at the time of the hearing, and the Vallejo office was handling the payroll for them. The record does not disclose further details regarding these jobs.

Leiser further testified that since January 1, 2006, the Employer has also supplied manpower to jobs in Montana, Utah, Washington and Southern California. Leiser testified that the Employer supplied only a few employees to the Utah project, but had supplied 60 or 70 employees to the Montana project, which ran from October 2005 to about February or March 2006. Both the Montana and Utah projects were managed by the Employer's Utah office.

The record does not reflect how many employees who regularly work out of the Northern California/western Nevada office have worked on these out-of-area or out-of-state projects, but Leiser testified that the separate "out-of-town" wage rates set forth in the Agreement apply to the jobs outside of the Northern California/western Nevada area, including out-of-state jobs.

The Employer's Managers. As indicated above, the Employer has project superintendents assigned to two of its permanent clients. The record shows that Scheduler Mark Strausbaugh procures and schedules manpower for the Vallejo facility. The six project managers who work at the Vallejo facility are in charge of bid projects and they and Strausbaugh determine the manpower needs for such projects. Project managers also address disciplinary matters and time and attendance issues that arise on their respective projects and decide whether overtime will be worked. Leiser testified that certain project managers specialize in asbestos, insulation and/or refractory work and generally oversee projects where the predominant type of work being

performed is within their specialties. However, there is no evidence that there are separate project managers for separate types of craft work being done at jobsites.

Foremen: As indicated above, in its brief, the Petitioner amended the unit description to include the foremen and dropped its assertion that the foremen should be excluded as statutory supervisors. The Employer has an undisclosed number of foremen who are covered under the existing Agreement. They oversee most of the Employer's bid projects, which have crews ranging in size from about one to twenty workers. All of the foremen are working foremen, who work with the tools of the trade side by side with other employees on a jobsite working. The foremen also assign routine tasks to other employees on jobsites, but the record shows that all personnel decisions are made by the project manager and/or the scheduler and not by the foremen. Foremen also fill out various forms—such as job hazard analysis forms, safety incident handle safety matters and work permits. They sometimes work on crews under other foremen and the Employer sometimes promotes an employee to work as a foreman for only a single job. The foremen basically serve as conduits to convey communications and information between the owner, inspectors, employees and the project manager. The record, in sum, supports the conclusion that they are not statutory supervisors.

The Employees. Leiser testified that as of April 23, 2006, the Employer employed approximately 113 full-time employees out of its Vallejo office, although, during the previous two months, it had employed about 150 employees.[5] As indicated above, the unit described in the Agreement lists employees in several different craft and non-craft positions. The record does not indicate the number of employees who are trained and/or certified to perform work in each of

[5] In this regard, the record reflects that in April of 2006, the Employer completed work on a maintenance account for Chevron, on which it had employed about 60 employees.

these crafts. Leiser testified that while the Employer has job descriptions for its employee classifications, it does not classify its employees by craft for payroll or other purposes and it trains its employees to perform work in multiple crafts and regularly assigns them to perform such work.[6] Specifically, Leiser testified that: the Employer provides its own in-house training and testing program in scaffolding and insulation; manufacturers provide training and certifications in floor coating, fire proofing and electrical tracing work; and, the State of California trains and certifies employees who engage in asbestos and lead abatement work. Leiser further testified that within a month or so of hire, a new employee will be trained and/or exposed to insulation, fireproofing, scaffolding and other types of craft work. According to Leiser, the Employer has no formal training program in refractory, painting and steam tracing work. The record is silent as to whether there is any training program for the other crafts listed in the Agreement, such as sheet metal, iron work and carpentry, and there is no other evidence concerning those crafts.

Leiser testified that the Employer's practice of training and assigning work to employees in multiple crafts is permitted under the Agreement. The Agreement does not contain any express reference to cross-craft training. However, while the scope of the Agreement sets forth both craft and non-craft employee classifications, as described above, the classifications listed in the Agreement for wage rate purposes are not listed according to craft classification but by experience level. Specifically, the Agreement contains tables for Northern California and for

[6] Leiser testified that he did not know whether the Employer's multi-craft policy is set forth in the Employer's handbook or in other personnel policies. According to Leiser, the Employer's payroll records and timesheets do not generally indicate the craft of an individual employee, although they may indicate what type of work he or she performed on a particular day. According to Leiser, the Employer also maintains job files for each job at its Vallejo office, which may contain the certifications of the employees who performed certain types of work on the project. The job file may also contain the permits for particular work, which may indicate the certifications of the employee who performed the permitted work.

Northern California "Out of Town" wage rates for the following classifications: "foreman A"; "foreman B"; "leadman LM"; "mechanic A"; "mechanic B"; "mechanic C"; "skilled helper"; "helper"; and, "laborer." Leiser testified that employees are paid based on their experience and skill level and not based on their craft classification or what type of craft work they perform on a job. For example, all "mechanics A" are paid the same wage rate, regardless of the type of craft work they perform. Leiser described the laborer classification set forth in the wage table as being that of an unskilled entry level worker who, after a month or two months on the job, is promoted to the level of helper, at which time he begins to learn a trade. More experienced helpers are promoted to the skilled helper level and, from there, are moved to the mechanic level, with mechanic A being the most highly skilled mechanic classification.

Leiser testified that, with the exception of new, untrained employees and about ten other employees who primarily perform insulation work at two jobsites, all of the Employer's employees regularly perform work in multiple crafts. For example, he testified that many of the Employer's employees, although not a majority, are scaffold-certified and that workers who are performing insulation or fireproofing work must also be scaffold-trained and certified in order to do such work. He further testified that the Employer employs: insulators, who perform all of the other types of craft work listed in the Agreement; painters, who also perform scaffolding and asbestos and lead abatement work; and, welders, who also perform refractory, scaffolding, insulation, fireproofing, and asbestos and lead abatement work. Leiser testified that the Employer has no employees who perform only asbestos abatement work and that most of the employees trained and certified to perform such work are also trained and certified to perform lead abatement work. In addition, he testified that the asbestos and lead abatement workers also perform insulation work. Leiser further testified that the Employer does not have any

employees who perform only painting or scaffolding work. According to Leiser, foremen specialize in various crafts but may work as an insulation foreman one week and as a refractory foreman the next week, and they may also work under other foremen performing work in different crafts.

The record does not disclose any evidence regarding the employees in the classifications that the Petitioner seeks to exclude from the unit in its amended petition (i.e., the sheet metal workers, carpenters, iron workers, fabricators, equipment operators, truck drivers and warehousemen), other than the fact that they are included in the unit under the existing Agreement. At the hearing, Petitioner's Counsel asked Leiser to name the types of craft work performed by the employees of the Employer under the Agreement, and Leiser testified that insofar as he recalled, it performed insulation, refractory, asbestos abatement, lead abatement,[7] fireproofing, scaffolding, painting, coatings,[8] steam and electric tracing and welding. However, Leiser was not directly asked by Petitioner's Counsel whether the Employer employed employees in the classifications that Petitioner seeks to exclude from the unit and, if so, what work tasks those employees performed. Petitioner made no effort at the hearing to elicit any evidence about such classifications.

ANALYSIS

1. Whether the Petitioned-For Unit Constitutes An Appropriate Unit.

It is well settled that when there is a history of collective bargaining and a petition seeks to carve out a craft or crafts by severing them from the established unit, the Board will look to all

[7] Although asbestos and lead abatement are not specifically listed in the unit description set forth in the existing Agreement, from the record it is clear that they are covered under the Agreement.

[8] Leiser testified that coatings refers to applying epoxy floor coatings.

relevant factors in determining the appropriateness of the unit. *DuPont de Nemours and Company*, 162 NLRB 413 (1966); *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966). The Board considers bargaining history to be a relevant factor in assessing the appropriateness of a unit, but it is not a conclusive one in a craft context. *Mallinckrodt, supra*. The standard announced in *Mallinckrodt* is applied in all industries. *Mallinckrodt, supra* at 398.

Here, Petitioner is seeking to sever certain craft workers from a broader unit that includes both additional craft workers and non-craft workers. On these facts, application of *Mallinckrodt* to the petition at issue is consistent with Board precedent.

In *Mallinckrodt*, the Board set forth the following criteria to establish the appropriateness of severance of a craft or departmental unit:

1. Whether the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen, performing the functions of their craft on a non-repetitive basis, or of employees constituting a functionally distinct department, working in trades or an occupation for which a tradition of separate representation exists.

2. The history of collective bargaining of the employees sought, at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.

3. The extent to which the employees in the proposed unit have established and maintained their separate identities during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.

4. The history and pattern of collective bargaining in the industry involved.

5. The degree of integration of the Employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned function of the employees in the proposed unit.

6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.

Applying these factors to the facts of the instant case, I find that Petitioner has not satisfied its burden of establishing the appropriateness of the petitioned-for unit.

Thus, Petitioner seeks to carve out employees who perform certain types of craft work from employees who perform other types of craft work and non-craft employees included under the Agreement, but it has provided little support for doing so. Thus, Petitioner's counsel made no attempt to adduce evidence regarding the classifications that Petitioner seeks to exclude from the existing contractual unit under the *Mallinckrodt* standards. Nor did Petitioner produce any evidence to show that the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen who have maintained their separate identities while they were included in the broader unit under the Agreement. There is no evidence of a history of collective bargaining in the unit petitioned for or in any unit other than the one covered under the existing Agreement. As noted above, in 2003, the Petitioner previously sought on three occasions to represent the insulation and asbestos abatement workers of the Employer but withdrew these petitions; and, in 2004, its petition in the same unit was dismissed based on the bar created by the Agreement. In addition, the record discloses no evidence reflecting the extent of participation or lack thereof by the petitioned-for employees in the establishment and maintenance of the existing pattern of representation except for the Region's determination in 2004, that the Incumbent Union was the

Section 9(a) representative of the Employer's employees covered by the Agreement, which included the petitioned-for employees. Nor did Petitioner elicit any evidence to show that the overall pattern of collective bargaining in this industry supports the unit it seeks. Further, the Petitioner has offered no evidence to establish its qualifications to represent employees in the petitioned-for unit. However, in this regard, I take administrative notice of prior Board decisions, which indicate that the Petitioner has represented insulation and asbestos abatement employees in the industry in this geographic area for several years. See e.g., *Jim Rodgers d/b/a Jim Rogers Superior Insulation*, 296 NLRB No. 66 (1989); *Babcock & Wilcox Construction Co., Inc*., 288 NLRB 620 (1988).

Lastly, Petitioner has not carried its burden to show that the unit should be confined geographically to the Northern California/western Nevada area. The record shows that the existing unit covers employees who work out of the Vallejo office at jobsites outside the Northern California/Western Nevada area and, at the time of the hearing, at least one project manager who works out of the Vallejo office was working at a South Carolina project and the Employer was also supplying a few employees from its Vallejo office to a project in Wyoming. Although Leiser's testimony shows that this out-of-state work constitutes only a small fraction of the Employer's work (one or two percent), the Petitioner has not established a basis for redefining the scope of the unit to exclude Vallejo employees working on such jobsites. In this regard, I note that the *Daniels* eligibility formula applied herein (as described below) will serve to ensure that eligible voters are regularly employed out of the Vallejo office.

In sum, the petition seeks to carve out employees performing some but not all of the types of craft work covered by the Agreement from other craft and non-craft employees covered by the Agreement, but Petitioner has not sustained its burden to support such a craft severance.

The record shows that the Employer has a cross-craft policy under which it trains, assigns and pays employees by their level of experience and skill and not by their craft status. Employees perform jobs across craft lines. All employees (craft and noncraft) who are included in the unit under the Agreement share common wages, benefits and other working conditions as established by the Agreement. There is no showing in the record that any of the employees in the excluded classifications have separate supervision, lack contact with other unit employees, or have any other unique working conditions that warrant excluding them from the unit. Indeed, Petitioner asked no questions to elicit such evidence. Further, the record is devoid of any history of collective bargaining or a practice in the industry that supports the unit sought by the Petitioner. In these circumstances, I find that a craft severance is not supported by the evidence and that the petitioned-for unit is not an appropriate unit.

Accordingly, I find that the existing unit covered by the Agreement is an appropriate unit for collective bargaining purposes and I am directing an election in that unit.

CONCLUSIONS AND FINDINGS

Based upon the entire record[9] in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.[10]

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[9] As indicated above, I have taken administrative notice of and included in the record as Rejected Exhibit 1 and as Board Exhibit 2, the Petitioner's brief and the Employer's motion to strike Petitioner's brief, and I have included as Board Exhibits 3 and 4, copies of the petition and letter dismissing the petition in Case 20-RC-17952.

[10] I agree with the Hearing Officer's ruling granting the Employer's motion to quash the subpoena duces tecum of Petitioner dated May 4, 2006. By its subpoena, Petitioner sought Employer payroll records and job records

2. The Employer is a corporation with a facility at Vallejo, California engaged in the construction industry as a contractor that performs insulation, asbestos abatement and other types of work. The parties stipulated, and I find, that during the 12-month period preceding the hearing, the Employer purchased goods and services valued in excess of $50,000 directly from outside the State of California. Based on the parties' stipulation to such facts, I find that the Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that Petitioner and the Incumbent Union are labor organizations within the meaning of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act

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showing the names and classifications of employees for the period November 1, 2005 to the present; job descriptions; records of dues payments to the Incumbent Union; and all Employer personnel policies or rules concerning wages, hours and working conditions for the period January 1, 2006 to the present. Thus, I agree with the Hearing Officer that the payroll records would be of limited evidentiary value in this case given Leiser's testimony that such records do not generally indicate the craft classifications of employees or what type of craft work employees perform on a jobsite. With regard to job records, while Leiser testified that they may contain such documents as permits and certifications, which may indicate that certain employees performed certain types of craft work that require such documents, such evidence would be of limited value. Thus, it would not show what other types of work the same employee performed on the same jobsite if the other work did not require a permit or certification. Further, I agree with the Hearing Officer's decision not to enforce the subpoena as to job descriptions, given that Leiser described the work performed by employees doing different types of craft work and their classification for wage rate purposes. I also agree with the Hearing Officer's conclusion that dues records are irrelevant to this proceeding and that employee handbooks or rules would be of limited evidentiary value because the record already contains the Agreement, which governs employee wages, benefits and working conditions, and because Leiser testified about the Employer's practice of cross-training employees in multiple crafts and paying wage rates that are not based on what type of craft work an employee is performing. Finally, I note in this regard that Petitioner's counsel had ample opportunity to examine Leiser about the employees in the classifications that Petitioner wanted to exclude from the petitioned-for unit and he did not avail himself of the opportunity. He can hardly complain about the lack of evidence in the record to support the petition in these circumstances.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees of the Employer, including insulators, helpers, laborers, truck drivers, warehousemen, fabricators, fireproofers, painters, scaffold builders, welders, steam and electrical tracers, equipment operators, refractory installers, sheet metal workers, carpenters, and iron workers employed by the Employer on work projects directed or administered by the Employer's Northern California (Vallejo) office; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION [11]

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Unless the Incumbent Union gives notice to the Regional Office within seven (7) days of the date of issuance of this Decision that it does not desire to appear on the ballot, the employees will vote whether or not they wish to be represented for purposes of collective bargaining by the **INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS LOCAL 16** or by the **INTERNATIONAL UNION OF PETROLEUM AND INDUSTRIAL WORKERS** or by **no labor organization**. If the Incumbent Union notifies the Regional Office within 7 days of issuance of this Decision that it **does not** desire to appear on the ballot, its name will not appear on the ballot and the employees will vote whether or not they wish to be presented by **INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS LOCAL 16** or by **no labor organization.** The date, time and place

[11] The Incumbent Union must notify the Region within seven (7) days of the issuance of this decision if it does not desire to be included on the ballot or it will be included. The Petitioner is given fourteen (14) days from the issuance of this decision to either make a sufficient showing of interest in the unit herein found appropriate, which is larger than the petitioned-for unit, or to withdraw the petition.

of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision

A. Voting Eligibility [12]

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are all employees in the unit (1) if they have been employed for 30 working days or more within the twelve months preceding the eligibility date for the election, or (2) if they have had some employment in those twelve months and have been employed for 45 working days or more within the twenty-four month period immediately preceding the eligibility date. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before

[12] The record does not contain any evidence or state the parties' positions regarding the eligibility formula to be used for purposes of an election. The *Daniel* eligibility formula (as set forth in *Daniel Construction Company, Inc.*, 133 NLRB 264 (1961), modified at 167 NLRB 1078 (1967), which is the formula generally applied in all construction industry elections, will therefore be applied in this case. In *Steiny and Company*, 308 NLRB 1323 (1992), the Board held that the *Daniel* formula is applicable to all construction industry elections -- regardless of whether the employer hires on a project-by-project basis or has a stable group of employees. As it is clear from the record that the Employer is a construction industry employer and the parties have not stipulated to the use of another formula, I find that the *Daniel* formula, as modified by *Steiny and Company*, is properly applied in this case.

the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 20, San Francisco, California 94103, **on or before June 12, 2006.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (415) 356-5156. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list

is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

D. Notice of Electronic Filing

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C.

20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **June 19, 2006.** The request may **not** be filed by facsimile.

DATED at San Francisco, California, this 5th day of June, 2006.

/s/ *Joseph P. Norelli*

Joseph P. Norelli, Regional Director
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Region 20
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H:r20com/decisions/20-RC-18080June2